



## **Agricultural Marketing Service**

### **7 CFR Part 981**

**[Doc. No. AMS-SC-21-0076; SC21-981-1]**

#### **Almonds Grown in California; Modification of Regulations; Withdrawal**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) withdraws a proposed rule recommended by the Almond Board of California (Board) that would have amended administrative requirements in the California Almond Marketing Order's (Order) roadside stand exemption, credit for market promotion activities, quality control, exempt dispositions, and interest and late charges provisions. In addition, the rule proposed to stay two sections of the administrative requirements that define almond butter and stipulate disposition in reserve outlets by handlers established under the Order. After reviewing and considering the comments received, the proposed rule is being withdrawn.

**DATES:** As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the proposed rule published on February 22, 2022, at 87 FR 6455, is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Peter Sommers, Marketing Specialist, or Gary Olson, Regional Director, Western Region Field Office, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: [PeterR.Sommers@usda.gov](mailto:PeterR.Sommers@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

**SUPPLEMENTARY INFORMATION:** This withdrawal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California. Part 981 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred

to as the "Act." The Board locally administers the Order and is comprised of growers and handlers of almonds operating within the production area.

This action withdraws a proposed rule published in the **Federal Register** on February 22, 2022 (87 FR 6455), to revise several sections of the Order's administrative requirements. The proposed rule comment period was reopened to provide for an additional 15 days of public comment in a notice published in the **Federal Register** on June 22, 2022 (87 FR 37240). The proposed rule would have amended requirements in the Order's roadside stand exemption, credit for market promotion activities, quality control, exempt dispositions, and interest and late charges provisions. In addition, it proposed to stay two sections of the administrative requirements that define almond butter and stipulate disposition in reserve outlets by handlers. The proposed changes were intended to modify the Order's requirements to reflect updates in industry practices and to facilitate the orderly administration of the Order.

During the proposed rule's initial 60-day comment period, four comments were received. All the comments may be viewed on the internet at <https://www.regulations.gov>. Of the comments received, two comments favored the proposed rule, one comment was neutral, and one was opposed. The comment opposed to the action was submitted by a large cooperative marketing association which also contained embedded comments from four individual growers. The opposing comments specifically objected to the proposed revision of § 981.441, credit for market promotion activities, including paid advertising. Further, the opposing comments questioned the Board's administrative process in recommending the proposed changes to AMS.

As a result of the comments received during the initial 60-day comment period, AMS decided to reopen the comment period for 15 days to allow for additional comments on the proposed amendments to the regulations. In the reopening announcement, AMS indicated that it is specifically looking for comments on provisions

related to credit-back administrative requirements and further comment on perceived issues related to the formulation of the recommendations for that provision.

During the proposed rule's reopened 15-day comment period, AMS received 1,155 comments, after subtracting 19 duplicate comment submissions. All comments may be viewed on the internet at <https://www.regulations.gov>. Of the 1,155 comments received, roughly 98 percent (1,133) were opposed, 0.17 percent (2) were in support, and 1.9 percent (22) were either non-specific or non-substantive with regards to the merits of the proposal.

During the reopened comment period, commenters identified adverse effects anticipated to both consumers and producers if the proposal were effectuated. Approximately 93 percent of all comments cited the proposed rule's negative impact on the ability of consumers to buy raw almonds through e-commerce. They claimed the proposed rule, if effectuated, would prevent them from purchasing raw almonds online, directly from the almond producer. These commenters represent consumers of raw almonds located in California and across the United States in approximately 46 states, and Bermuda. Over half of all commenters reference the proposed changes to the Roadside stand exemption (§ 981.413) and Handler Definition (§981.13). These comments stated that the proposed changes in each section will likely prevent consumers from being able to access raw almonds from producers through direct e-commerce sales transactions. Almost 64 percent described the disproportionate economic impact that the proposed rule would have on small growers. Some commenters expressed that they lacked notice of the rulemaking action altogether or described general dissatisfaction with the rulemaking process.

The two comments expressing support for the proposed rule were general. One commenter expressed support for excluding e-commerce under the roadside stand

exemption. The second comment supported the proposed change and expressed concern that potentially unsafe products are being sold online in the open market.

After reviewing and considering all comments received during both public comment periods, AMS has determined that the proposed rule to modify administrative requirements for almonds grown in California should be withdrawn. AMS intends to conduct outreach with California almond industry stakeholders on the concerns expressed during the public comment periods. Accordingly, the proposed rule to modify the administrative rules and regulations in the Order that published in the **Federal Register** on February 22, 2022, (87 FR 6455) is hereby withdrawn.

**List of Subjects in 7 CFR Part 981**

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 601-674.

**Erin Morris,**

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